

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA	:	
	:	1:09-CR-00154
	:	
	:	OPINION & ORDER
	:	
v.	:	
	:	
	:	
GREGORY TATE	:	
	:	

This matter is before the Court Gregory Tate's "Motion to extend litigation rule #6" (doc. 67), the Government's response in opposition (doc. 69), and Tate's reply in support (doc. 70). In essence, Tate petitions the Court for an extension of time in which to submit a petition for habeas relief under 28 U.S.C. § 2255.

On March 5, 2012, the Supreme Court denied Tate's petition for writ of certiorari regarding his 2010 federal conviction for being a felon in possession of a firearm. Therefore, Tate had until March 5, 2013 to file a habeas petition. See 28 U.S.C. § 2255(f). On February 25, 2013, Tate filed the instant motion. He contends that he is proceeding pro se, that the attorney who had been assisting him in his application is currently under investigation by the Ohio Bar for providing ineffective assistance to clients, and that he has been unable to access the prison library as needed because of lockdowns in the prison. He

thus asks the Court for an extension of time in which to submit his habeas petition.

The Government opposes Tate's motion, arguing that Tate has failed to show that any extraordinary circumstances prevented him from timely filing the motion.

The Court is persuaded that, under the circumstances alleged by Tate, justice will be best served by granting him an extension in which to file a habeas petition. Assuming that the prison lockdowns have in fact occurred and that they have prevented him from accessing the library as needed, Tate, through no fault of his own, has been hindered from timely filing the petition.

Tate appears to ask the Court for an extension of time up to the point at which the Ohio Bar concludes its investigation of Tate's former attorney, but that is far too uncertain a deadline, and the Court will not permit Tate an indefinite period in which to file his petition. Instead, Tate's motion is GRANTED to the extent that he is given an extension, and he has until July 5, 2013 to file his petition. A petition filed after July 5, 2013 will be considered untimely, and Tate would then need to show cause for filing out of time.

SO ORDERED.

Dated: April 18, 2013

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge